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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1966.

No. 469.

ARCHIE J. LAYTON, ISAAC A. BYRD, JAMES W. BROWN, and JOSEPH R. AINLEY, in Behalf of Themselves and a Committee for and in Behalf of All Other Persons of a Class Similarly Situated,
Petitioners,

vs.

SELB MANUFACTURING COMPANY, a Division of Western, Inc., a Corporation, and BLADES MANUFACTURING CORPORATION, a Corporation, and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, a Labor Organization, Appellees,
Respondents.

BRIEF

Of Respondent, International Association of Machinists, District No. 9 in Opposition to Petition for Writ of Certiorari.

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Respondents.

BRIEF

Of Respondent, International Association of Machinists, District No. 9 in Opposition to Petition for Writ of Certiorari.

This cause should not be reviewed by this Court because none of the considerations set forth in Rule 19 is present in this case. Not only is there a complete absence of any special or important reason for granting certiorari, but the appeal is, as the Court of Appeals specifically ruled, frivolous. Inasmuch as Petitioners failed to comply with Rule 23, par. 1 (a) and (i), we are herewith attaching as Appendix "A" a copy of the opinion of the United States Court of Appeals for the Eighth Circuit handed down on May 2, 1966.

QUESTIONS PRESENTED.

The questions which Petitioners contend are presented in this case were not presented to nor decided by the Court of Appeals for the Eighth Circuit, nor are those questions grounded on facts set forth in the record of this case. The questions Petitioners argue are here presented are, in fact, completely at variance with and contrary to the actual facts as shown by the record herein.

Petitioners in framing said questions rely on two propositions, namely, that the compromise settlement of the arbitration award was contrary to the mandate of the Court of Appeals, and second, that the membership involved had revoked the authority of Respondent Union to enter into such settlement agreement. Both propositions are completely at variance with the facts in this case. In order to demonstrate this, and because Petitioners' Statement of the Case is inadequate and incomplete, Respondent Union is compelled to make its own Statement of the Case.

STATEMENT OF THE CASE.

For convenience, Respondents Selb Manufacturing Company and Blades Manufacturing Corporation will be referred to herein as Respondent-Company and Respondent International Association of Machinists, District Number 9 will be referred to as Respondent-Union.[1]

Respondent-Union was the sole and exclusive bargaining agent for all production, maintenance and machine shop employees (including Petitioners herein) of Respondent-Company (S. R. 2, 8). A grievance was filed by Respondent-Union which ultimately led to an Arbitration

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[1] In addition to Petitioners' Record in the Court of Appeals, Respondents filed a Supplemental Record. Therefore, reference to Petitioners' Record is made as (R.) Reference to Respondents' Supplemental Record is made as (S. R.).

Award which ordered Respondent-Company to rehire employees laid off after a certain date, make them whole financially and return machinery and equipment from where they had been shipped to St. Louis.

After the Arbitration Award became final, but was not complied with by the Respondent-Company, Respondent-Union filed suit under Section 301 of the National Labor Relations Act, 29 U. S. C., Section 185, for specific performance of said Award (S. R. 1-7). On December 27, 1961, the District Court entered its conclusions of law that the grievance in question was submitted by Respondent-Union and Respondent-Company to arbitration under their contract, and the Arbitration Award became final and binding upon Respondent-Union and Respondent-Company. The District Court then entered its Decree compelling specific performance of the Arbitration Award, and specifically retained jurisdiction for the purpose of carrying out a Stipulation on Subsequent Procedure entered in by the Parties (S. R. 31, 32).

The Stipulation on Subsequent Procedure was entered into because the Arbitration Award did not declare the names of the employees who were entitled to be reinstated, how much money each such employee was entitled to receive, what machinery and work were to be returned to St. Louis, and because the parties recognized that further proceedings would have to be had in order to determine the foregoing, so that a final judgment on which an execution could issue could be entered (R. 31).

The Stipulation on Subsequent Procedure (S. R. 29, 30) provided as follows:

> "In the event the Court enters its order decreeing specific performance of the Arbitration Award then, and in the event that no appeal is taken, the parties shall attempt to reach agreement on what specifically

the defendants must do in order to comply with the aforesaid Arbitration Award. In the event that the parties are unable to reach agreement within thirty days after expiration of the period permitted for appeal, or such additional time as the parties may agree upon, then on application by either party the Court shall appoint a commissioner to implement compliance with the Award.

In the event that either party hereto appeals the finding and order of this Court and/or any appellate court with respect to whether or not defendants must comply with the arbitration award, the further steps mentioned above shall be held in abeyance pending disposition of said appellate procedure. If it is finally determined, on appeal, that defendants must comply, then the aforesaid procedure shall be followed."

On July 6, 1962, the Court of Appeals for the Eighth Circuit affirmed the decree of the District Court, and stated that the District Court retained jurisdiction for further proceedings. (**Selb Manufacturing Company v. International Association of Machinists, District 9**, 305 F. 2d 177). On August 29, 1962, the Court of Appeals issued its mandate.

After the decision of the Court of Appeals was handed down, Respondent-Union (as Plaintiff) and Respondent-Company (as Defendant) engaged in negotiations, looking towards a possible settlement of the case (R. 28). After consideration and rejection of a number of proposals made by the Company, the Respondent-Union decided to accept in settlement the sum of One Hundred Twenty-Five Thousand Dollars ($125,000.00), plus certain re-employment rights (as set forth in the Settlement Agreement of October 11, 1962, Defendants' Exhibit A-1, S. R. 35-39) (S. R. 41).

A meeting of the employees of the Company was held on September 22, 1962, at which Petitioners herein were present. (S. R. 40-42, 53, 68, 71). The employees were advised that Respondent-Union had authorized its attorneys to settle the pending litigation for the total amount of One Hundred Twenty-Five Thousand Dollars ($125,000.00) (S. R. 41, R. 54, 55), and then the membership voted that District No. 9, rather than a committee of its members, should process the claims of the employees to determine what portion or amount of the settlement should be received by each of those persons eligible to share in the settlement (R. 28, 35; S. R. 41, 50, 51).

After the September 22, 1962, meeting, Respondent-Union, acting pursuant to the authorization given it by the membership and the District Board (R. 42), entered into the Settlement Agreement and Stipulation (S. R. 35-39). Pursuant to this Agreement the Respondent-Company paid Respondent-Union One Hundred Twenty-Five Thousand Dollars ($125,000.00), which the Union accepted "on its behalf and on behalf of its members in full and complete satisfaction and settlement of all claims, demands, actions, causes of action and judgment. . . ." The agreement further provided that under certain conditions the Company would be required to re-open a plant in St. Louis, and that in any event, if the Company re-opened any plant within the Union's jurisdictional area it would recall the employees in question (S. R. 37, 38).

Upon receipt of the aforesaid One Hundred Twenty-Five Thousand Dollars ($125,000.00), Respondent-Union began processing the claims of the individual members. In the course of processing these claims to determine the amount each eligible employee was entitled to receive, the Union sent at least four letters to the employees requesting information relative to their employment in

order to determine their eligibility and the amount of their respective claims to the settlement proceeds (S. R. 42-46). The processing of these claims was interrupted because of a protest filed **by Petitioner Layton**, and as a result of **his** objections, another meeting of the Union membership was called and took place on March 30, 1963 (S. R. 39, 40).

At the March 30, 1963, meeting, the officers and counsel of Respondent-Union explained in detail that the aforesaid settlement of the case had been made with the Company, but that any one of the members could file a suit to set aside the settlement. The Union officers and counsel made it perfectly clear that none of the funds received in settlement of the litigation would be disbursed, unless everyone present agreed to the settlement and indicated by his vote that he did not intend to file a suit to contest the settlement (S. R. 48-50, 53, 54, 56).

All of the Petitioners were present at this second meeting and took an active part, particularly Petitioner Layton, who spoke at length and stated he had checked the settlement thoroughly with his committee and that "we do not plan suit" (S. R. 52). Petitioner Layton also testified in a hearing before the District Court that he had engaged a law firm in February of 1963, to check the court records, and said law firm showed copies of the court records to Layton (R. 52, 53).

During the discussion of the motion at the March 30, 1963, meeting, as to whether to approve the aforesaid settlement that had been made between the Company and the Union, Petitioner Layton asked whether the vote was to be an approval of the entire settlement, or just of the money portion (S. R. 55). It was explained to him and the membership that the proposal they were voting on was whether to approve a settlement of the entire

case, not just the money, but jobs and everything (S. R. 55, 56).

At the conclusion of the discussion, the Union membership, without objection or a dissenting vote from anyone, including the four Petitioners, unanimously approved and ratified the settlement (S. R. 57).

On June 14, 1963, pursuant to the approval and ratification of the settlement by the membership, and after determining the persons eligible to share in the settlement proceeds and the amount to which each such employee was entitled, as it had been authorized to do by the membership, the Union sent out letters to the employees entitled to share in the proceeds of the settlement, each of which letters contained the following statement (R. 12):

> "Enclosed please find check in the amount of $....., which represents payment in full of your claim against Selb Manufacturing Company and Blades Manufacturing Corporation pursuant to the Settlement Agreement entered into in the case of **I. A. of M. District 9 versus Selb Manufacturing Company and Blades Manufacturing Corporation**, No. 61 C 20 (1), in the United States District Court for the Eastern Judicial District of Missouri, Eastern Division . . ."

Enclosed with each letter was a check to the respective employees, including Petitioners herein (S. R. 58).

On the back of each of the checks there was the following stamped release (S. R. 61):

> "Endorsement constitutes full and complete satisfaction and settlement of my claims arising out of Cause No. 61 C 20 (1), in the U. S. District Court for the Eastern Judicial District of Missouri, Eastern Division, styled **International Association of Machinists, District 9 versus Selb Manufacturing Company**

et al., and a full and complete Release of the above mentioned parties, the I. A. of M. District 9 Welfare Association and their officers, agents and employees."

Each of the above checks received by the Petitioners was endorsed by them below the stamped release. At the hearing on the Motion, each of them admitted endorsing the check and receiving the money (R. 57, 69, 71, 74).

On March 15, 1965, after a lapse of almost two and one-half years, Petitioners filed their Motion under Rule 60 (b) (6), Federal Rules of Civil Procedure, seeking to set aside the order of the District Court dismissing this case pursuant to the settlement previously made. The District Court afforded Petitioners a full hearing on their Motion.

DISTRICT COURT FINDINGS.

Based upon the foregoing facts, the District Court overruled Petitioners' Motion herein, and, in addition to finding essentially the foregoing facts (R. 79), found that the Petitioners had full and complete knowledge of the settlement; that the Union that brought the arbitration was responsible for obtaining the relief and was the proper representative of all of the employees (R. 82); that the Union and Company had the right to settle the litigation without leave of the Court of Appeals (R. 83) and that, in any event, the facts showed clearly that the Petitioners had full knowledge of the settlement made by the Union, and they were barred from proceeding by acceptance of the money and the signing of the releases (R. 84).

COURT OF APPEALS FINDINGS.

In affirming the District Court, the Court of Appeals noted that the sole ground relied upon by Petitioners in their appeal was that the District Court erred in allowing a judgment which had been affirmed to be set aside

and dismissed without permission or approval of the Appellate Court contrary to the holdings in its cases of **Hartman v. Lauchli,** 304 F. 2d 431 (8th Cir. 1962) and **Thornton v. Carter,** 109 F. 2d 316 (8th Cir. 1940). In disposing of this contention, the Court of Appeals pointed out that the legal principle involved in those cases had no application whatsoever to the facts in this case. The Court of Appeals specifically pointed out that the District Court retained jurisdiction for the purpose of carrying out the Stipulation on Subsequent Procedure, and that it had obviously recognized the possibility of a settlement when it stated in its affirming opinion that "any controversy over backpay allowances can, **if necessary,** be dealt with by the District Court in accordance with the Stipulation of the parties relating to implementation of the award."

Thus, the Court of Appeals, in interpreting its own mandate, found that the parties did **not** violate its mandate. The Court of Appeals rejected the sole ground raised by Petitioners, stating (Appendix A, page 19):

> "It is abundantly clear that the District Court in approving the stipulation dismissing the case acted in conformance with the mandate of this Court. The appeal herein is wholly without merit."

In addition to holding Petitioners' appeal to be wholly without merit, the Court of Appeals found that, under the facts, the Petitioners' appeal was frivolous and assessed damages against them.

ARGUMENT AGAINST GRANTING CERTIORARI

Petitioners advance no argument or reason in support of their Petition for a Writ of Certiorari other than referring this Court to arguments they made in their Petition for Re-Hearing filed in and overruled by the Court of Appeals. Therefore, looking to that document in an

effort to glean their position and answer the same, we find no reasons advanced therein of such moment to compel this Court to grant certiorari, and certainly, none of the considerations set forth in Supreme Court Rule 19 is present here. All that Petitioners seem to be urging is that the Court of Appeals does not understand what it stated in its own opinion.

Respondent-Union submits that the record herein does not reflect any persuasive reason why the Court should grant certiorari.

First of all, the questions which Petitioners say are present here are not present at all. The principal reason for this is that the questions, as posed, assume facts which are not contained in the record. Specifically, Question "A" states that the "membership involved his revoked the settlement authority." A cursory reading of Respondent's Statement of the Case and the record demonstrates that this statement is wholly inaccurate. Respondent-Union felt constrained to make a rather detailed Statement of the Case in order to show clearly the error of this assertion. It is crystal clear from the record that not only did the membership approve the settlement and ratify the same with full knowledge of its terms, but also, that they accepted the fruits thereof and enjoyed the same for almost two and one-half years before Petitioners filed their Motion under 60 (b) (6) which initiated these proceedings. These facts were found by the District Court, the Court of Appeals affirmed, and hence it is clear that nothing is presented by Question "A."

Question "B" also poses an issue which is not involved herein where it is claimed that the mandate of the Court of Appeals was changed without its consent.

Petitioners seem to contend that the opinion of the Eighth Circuit Court of Appeals is in conflict with its

own cases of **Hartman v. Lauchli**, 304 F. 2d 431 (8th Cir. 1962) and **Thornton v. Carter**, 109 F. 2d 316 (8th Cir. 1940). If this is their position, it is obvious that such a position is not well founded, since both of these cases are factually different from the present case. Stated as an abstract rule, Petitioners correctly contend that the mandate of an appellate court cannot be altered or changed without the permission of that court. However, that rule has no meaning here, simply because the present fact situation does not warrant its application.

The Court of Appeals so found when it held at page 4 (Appendix A, pages 18-19) of its opinion:

> "While it is true that the cases cited by the appellants support the proposition that a District Court does not have the authority to alter or deviate from a mandate of the Court of Appeals without first obtaining the appellate court's consent, the legal principle involved has no application whatsoever to the facts of this case.
>
> "As previously mentioned in the chronological description of the event which eventually culminated in the instant appeal, this Court specifically noted that the District Court retained jurisdiction of the case for the purpose of carrying out the Stipulation of Subsequent Procedure filed by the parties. After remand of the case, the Appellee-Union and the Appellee-Company entered into a settlement agreement. The fact that the District Court then, upon the request of the parties to the action, dismissed the cause of action with prejudice to the plaintiff in no manner disturbed the mandate of this Court. It is obvious that in affirming the District Court's judgment, this Court recognized the possibility of such a settlement when it stated that 'any controversy over backpay allowances can, **if necessary**, be dealt with by the

District Court in accordance with the stipulation of the parties relating to implementation of the award.' **Selb Manufacturing Company v. International Association of Machinists,** supra at 179. It is abundantly clear that the District Court in approving the stipulation dismissing the case acted in conformance with the mandate of this Court. The appeal herein is wholly without merit."

The last Question "C" claimed to be present in this case is likewise not present, since it appears to be little more than a re-phrasing of Question "A," and also contrary to the facts.

From the foregoing, it is clear that the questions posed by Petitioners are not relevant here, since they are based upon non-existent facts that are not contained in the record. Hence nothing is presented by them for this Court to decide.

In addition, a search of the record does not disclose any factual, legal or procedural error requiring the Court to grant certiorari. Petitioners have failed to demonstrate that there are issues present of sufficient importance to be decided by this Court. No conflict in opinions by the Court of Appeals for the Eighth Circuit with any other Circuit Court of Appeals, its own or of this Court, has been pointed out.

Respondent-Union submits that the judgment of the Court of Appeals was manifestly correct. There also exist a number of meritorious defenses that bar Petitioners from relief in any event. These are based on lack of capacity, estoppel, untimeliness of Petitioners' Motion and others which clearly demonstrate that the decision of the Court of Appeals was for the right parties. Petitioners were afforded a full and fair hearing in the District Court. Their only argument appears to be that the Court of Appeals has misinterpreted its own mandate.

That Court has, however, made it perfectly clear that everything done by the Parties was not only not contrary to its mandate, but also well within what that Court intended and contemplated would be done. In short, Petitioners' appeal herein is, as the Court of Appeals found, "wholly without merit."

Petitioners have advanced no reasons of any substance nor anything approaching the criteria which Supreme Court Rule 19 states will be considered for granting review on certiorari.

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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